Supreme Court, U.S.
FILED
OCT 19 2005
OFFICE OF THE CLERK

No. 05-524

In the
Supreme Court of the United States

BEAZER EAST, INC.,
Petitioner,

v.

THE MEAD CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

D. MATTHEW JAMESON III
(Counsel of Record)
MARK D. SHEPARD
K. MARK HALL
MELISSA L. EVANS
Of the firm:
BABST, CALLAND, CLEMENTS AND ZOMNIR, P.C.
TWO GATEWAY CENTER, 8TH FLOOR
PITTSBURGH, PA 15222
(412) 394-5400

Counsel for Petitioner Beazer East, Inc.

OCTOBER 19, 2005

Becker Gallagher Legal Publishing, Inc. 800.890.5001

PARTIES TO THE PROCEEDING

Petitioner is Beazer East, Inc. Respondent is The Mead Corporation. In addition to these parties, Koppers Industries, Inc. was a third-party defendant in the proceedings below.

RULE 29.6 STATEMENT

Beazer East, Inc. is not a publicly traded company. Hanson PLC is the ultimate parent company of Beazer East, Inc. Hanson PLC is a publicly traded company. There are a number of companies that are both intermediate parent companies of Beazer East, Inc. and subsidiary companies of Hanson PLC, but none of these companies are publicly traded.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

RULE 29.6 STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF CONTENTS OF APPENDIX vi

TABLE OF AUTHORITIES viii

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 6

Summary of Argument 6

I. The Decision of the Third Circuit Directly Conflicts with the Tenth Circuit and Generally Conflicts with Decisions of Other Circuits 7

A. The Third and Tenth Circuits are in Direct Conflict 7

B. The Third Circuit's Opinion Generally Conflicts with the Manner in Which Other Circuits Have Analyzed the Magistrates Act . 9

II. This Court Has Not Ruled on the Application of § 636(b)(3) in Civil Cases, but This Is an Important Question of Federal Law That Should Be Settled by This Court 11

A. This Court Has Not Ruled on the Scope of the Authority Created by Congress in § 636(b)(3) for District Courts to Refer Non-Jury Civil Matters to Magistrates Without the Consent of the Parties 11

B. This Is an Important Issue That Should Be Settled by This Court 12

1. Providing Guidance on the Scope of "Additional Duties" That Can Be Assigned to Magistrates Pursuant to § 636(b)(3) Is Essential to Judicial Economy 13

2. The Third Circuit's Decision Will Have a Significant Chilling Effect on the Congressional Intent to Permit District Courts to Experiment with the Use of Magistrates 14

3. The Express Language of the Statute Requires That This Court Articulate Any Constitutional Limitations Regarding the Additional Duties of Magistrates 19

III. The Third Circuit's Decision Conflicts with Relevant Decisions of This Court 21

A. The Third Circuit's Opinion Conflicts with Rationale Underlying This Court's Application of § 636(b)(3) to Criminal Cases 22

1. There Is No Article III Violation 22

2. There Is No Due Process Violation 24

B. The Third Circuit Improperly Limited the Magistrate's Authority Even Though a *De Novo* Determination of the Magistrate's Proposed Findings Was Made by the District Court 26

CONCLUSION 30

TABLE OF CONTENTS OF APPENDIX

Third Circuit Order Denying Rehearing *En Banc*
Dated 7/21/05 . . . . . 1a

Third Circuit Judgment
Dated 6/23/05 . . . . . 3a

Third Circuit Opinion Reversing and Remanding
to District Court
Dated 6/23/05 . . . . . 5a

District Court Order Entering Declaratory
Judgment for Future Response Costs
Dated 10/08/02 . . . . . 43a

District Court Order Requesting Proposed
Declaratory Judgment Orders
Dated 09/19/02 . . . . . 46a

District Court Order Awarding Prejudgment Interest
Dated 09/17/02 . . . . . 48a

District Court Order Entering $3,243,467.80
Judgment in Favor of Beazer
Dated 08/29/02 . . . . . 50a

District Court Opinion Regarding Beazer's
Recoverable Response Costs
Dated 08/29/02 . . . . . 52a

District Court Memorandum and Order Regarding
Magistrate's 11/24/99 Proposed Findings
Dated 03/07/00 . . . . . 111a

Magistrate's Proposed Findings of Fact and Conclusions of Law Regarding Allocation Factors Dated 11/24/99 . . . . . 131a

District Court Memorandum and Order Denying Mead's Objections to Magistrate Referral Dated 04/30/97 . . . . . 233a

Magistrate Order Scheduling Briefing and Hearing on Allocation Factors Dated 08/29/96 . . . . . 240a

District Court Memorandum Order Referring Allocation Issues to Magistrate Dated 08/12/96 . . . . . 244a

Federal Magistrates Act, 28 U.S.C. § 636 (2005) . . . 248a

Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9613 . 258a

TABLE OF AUTHORITIES

Cases:

Arizona v. Fulminante,
499 U.S. 279 (1991) 29

Barnes v. Kerr Corp.,
418 F.3d 583 (6th Cir. 2005) 17

Beazer East, Inc. v. Mead,
412 F.3d 429 (3d Cir. 2005) 1

Beazer East, Inc. v. Mead,
34 F.3d 206 (3d Cir. 1994),
cert. denied 514 U.S. 1065 (1995) 1, 3

Calderon v. Coleman,
525 U.S. 141 (1998) 29

Clark v. Poulton,
963 F.2d 1361 (10th Cir.),
cert. denied, 506 U.S. 1014 (1992) 7, 8

Colo. Bldg. & Constr. Trades Council v. B.B. Andersen Constr. Co.,
879 F.2d 809 (10th Cir. 1989) 10-11

Estate of Conners v. O'Connor,
6 F.3d 656 (9th Cir. 1993) 10

Feist v. Jefferson County Comm'rs Court,
778 F.2d 250 (5th Cir. 1985) 9

Ford v. Estelle,
740 F.2d 374 (5th Cir. 1984) 10, 20

Gen. Motors Corp. v. New A.C. Chevrolet, Inc.,
263 F.3d 296 (3d Cir. 2001) 28

Gomez v. United States,
490 U.S. 858 (1989) . . . . . *passim*

Hatco Corp. v. W.R. Grace & Co. Conn.,
59 F.3d 400 (3d Cir. 1995) 24

Hill v. Duriron Co.,
656 F.2d 1208 (6th Cir. 1981) 10

In Matter of Establishment Inspection of Gilbert & Bennett Mfg.,
589 F.2d 1335 (7th Cir. 1979) 9

In re Armco,
770 F.2d 103 (8th Cir. 1985) 8

In re United States,
816 F.2d 1083 (6th Cir. 1987) 8

Loral Corp. v. McDonnell Douglas Corp.,
558 F.2d 1130 (2d Cir. 1977) 9

Marbury v. Madison,
5 U.S. 137 (1803) 19

Massey v. City of Ferndale,
7 F.3d 506 (6th Cir. 1993) 10

Mathews v. Eldridge,
424 U.S. 319 (1976) 24, 25

Mathews v. Weber,
423 U.S. 261 (1976) . . . . . *passim*

McCarthy v. Bronson,
500 U.S. 136 (1991) 7, 13, 15, 16

McLeod, Alexander, Powel & Apffel, P.C. v. Quarles,
925 F.2d 853 (5th Cir. 1991) 10

Medina v. California,
505 U.S. 437 (1992) 25

Members v. Paige,
140 F.3d 699 (7th Cir. 1998) 28

Northern Pipeline Constr. Co v. Marathon Pipeline Co.,
458 U.S. 50 (1982) 22, 23, 24

Peretz v. United States,
501 U.S. 923 (1991) . . . . . *passim*

Porter v. Nussle,
534 U.S. 516 (2002) 16

Raddatz v. United States,
447 U.S. 667 (1980) . . . . . *passim*

Rajaratnam v. Moyer,
47 F.3d 922 (7th Cir. 1995) 10

Roell v. Withrow,
538 U.S. 580 (2003) 19

Stauble v. Warrob, Inc.,
977 F.2d 690 (1st Cir. 1992) 8

Thomas v. Union Carbide Agric. Products Co.,
473 U.S. 568 (1985) 24

United States v. First Nat'l Bank of Atlanta,
628 F.2d 871 (5th Cir. 1980) 28

United States v. Mueller,
930 F.2d 10 (8th Cir. 1991) 28

Wharton-Thomas v. United States,
721 F.2d 922 (3d Cir. 1983) 23

Williams v. Taylor,
529 U.S. 362 (2000) 19

Wingo v. Wedding,
418 U.S. 461 (1974) 15

Statutes and Rules

28 U.S.C. § 636 (1968) 15

28 U.S.C. § 636 (2005) . . . . . *passim*

28 U.S.C. § 1254 1

28 U.S.C. § 1291 2

42 U.S.C. § 9613 . . . . . 2, 3, 18, 27

40 C.F.R. § 300 (1990) 5